

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 25 2005

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JEFFREY LYNN CHAMBERLAIN

Appeal No. 2005-1271  
Application No. 09/922,376

ON BRIEF

Before KIMLIN, GARRIS and PAWLIKOWSKI, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-5, 7, 8 and 10-13. Claims 6, 9 and 14-20 stand withdrawn from consideration. Claim 2 is illustrative:

2. An apparatus to alleviate pet thirst comprising:

a reservoir having a wall, said wall having a fill aperture and valves; said fill aperture having a closeable openable cap, said cap when open allowing liquid to enter said reservoir through said fill aperture, said cap when closed denying egress from said reservoir; said valves having pressure actuated opening

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means, said valves under pressure allowing liquid to exit said reservoir, said valves when not under pressure denying egress from said reservoir; an outer layer enclosing said wall, said outer layer being shaped to resemble a food item.

Appellant further states that "[c]laim 1 is actually deleted and therefore simply needs to be cancelled" (page 10 of principal brief, second sentence).

The examiner relies upon the following references in the rejections of the appealed claims:

Deshaines	5,944,516	Aug. 31, 1999
Huettnner et al. (Huettnner)	6,092,489	Jul. 25, 2000
Hass	5,961,406	Oct. 5, 1999

Appellant's claimed invention is directed to an apparatus or device for alleviating the thirst of a pet, such as a dog. An outer wall defines a reservoir for a liquid, such as water, and the wall contains pressure actuated valves which allow the liquid to exit the reservoir when pressure is exerted by, for example, the bite of a dog. An outer layer encloses the wall and is shaped to resemble a food item, such as a bone.

Appealed claims 1, 2, 7, 8 and 11 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Deshaies. Claims 3 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Deshaies, while claims 4 and 10 stand rejected under § 103 as being unpatentable over Deshaies in view of Hass.

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In addition, claims 5 and 13 stand rejected under § 103 as being unpatentable over Deshaies in view of Huettner.

In accordance with the grouping of claims set forth at page 9 of the principal brief, claims 3 and 12 stand or fall together, as do claims 4 and 10, and claims 5 and 13.

We have carefully considered each of the arguments advanced by appellant. However, we are in complete agreement with the examiner's reasoned and thorough analysis and application of the prior art, as well as her cogent disposition of the arguments raised by appellant. Accordingly, we will adopt the examiner's reasoning as our own in sustaining the rejections of record, and we add the following for emphasis only.

We consider first the examiner's rejection under § 102 over Deshaies. As explained by the examiner, Deshaies, like appellant, discloses an apparatus having a reservoir defined by a wall having a fill aperture and valves therein for allowing the ingress and egress of a liquid. The valves of Deshaies have pressure actuated opening means, as presently claimed, such that when pressure is exerted by the bite of a dog liquid exits the reservoir through the valves. Also, Deshaies expressly teaches that in order to attract an animal, such as a dog, the hollow portion of the device "can be shaped to look like a dog bone [or]

can take on any one of numerous shapes so as to attract the interest of a pet" (column 8, lines 46-49). Consequently, we agree with the examiner that Deshaies describes the subject matter of claims 1, 2, 7, 8 and 11 within the meaning of § 102.

Appellant contends that the device of Deshaies does not have an outer layer that is shaped to resemble a food item since "its surface is covered with brushes" (page 12 of principal brief, first paragraph). However, the fact that a brush can protrude from the outer layer does not negate the fact that the outer layer of Deshaies, itself, can be shaped to resemble a food item, such as a bone. Furthermore, Deshaies teaches that the brush protrudes from the outer layer only when it is compressed (see column 3, lines 3 et seq. and 22-25).

With respect to claims 7 and 8, appellant maintains that Deshaies does not disclose a valve mechanism capable of alternate movements substantially perpendicular to the wall. Appellant points out that "[t]he Deshaies invention shows valves at Figure 7 which are slits deformable under pressure and there fore [sic, therefore] move in a direction substantially parallel with the wall" (page 11 of principal brief, second paragraph). However, the examiner explains that Figures 2 and 7 of Deshaies were not relied upon in the rejection but, rather, the examiner cites

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Figure 3 of the reference for disclosing a valve mechanism 46 that moves substantially perpendicular to the wall. We note that appellant's Reply Brief does not address the substance of Deshaies' Figure 3.

Turning to the § 103 rejection of claims 3 and 12, we fully concur with the examiner that it would have been obvious for one of ordinary skill in the art to apply indicia to the device of Deshaies for any of a number of reasons, including to make the device more attractive to the buying public.

Regarding the § 103 rejection of claims 4 and 10 over Deshaies in view of Hass, we are satisfied that it would have been obvious for one of ordinary skill in the art to attach a cord to the device of Deshaies "in order to enable the owner to carry the device without having to contact the chewed portion of the device" (page 5 of Final rejection, last paragraph). Although appellant points out that Deshaies teaches that rope bones may result in a dog choking on large pieces of rope, this is certainly not tantamount to a teaching away of attaching any rope of any material to the device. Furthermore, it is a matter of obviousness for one of ordinary skill in the art to employ a known feature along with its attendant disadvantages. As for appellant's argument that the combination of Deshaies with Hass

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would be inoperative, the examiner properly sets forth that "[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference" (page 6 of Answer, last paragraph).

In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Concerning the § 103 rejection of claims 5 and 13 over Deshaies in view of Huettner, we are convinced that it would have been obvious for one of ordinary skill in the art to incorporate a noise maker into the device of Deshaies. Indeed, as acknowledged at page 1 of appellant's specification, it was known in the art to provide a noise maker, such as a bell, inside an edible toy for a dog.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

*Edward C. Kimlin*

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Administrative Patent Judge )  
)

*Bradley R. Garris*

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